

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION**

)
) **MDL No. 1456**
) **Master File No. 01- 12257-PBS**
) **Subcategory Case. No. 06-11337**
)

THIS DOCUMENT RELATES TO:

*United States of America ex rel. Ven-A-Care of the
Florida Keys, Inc., et al. v. Dey, Inc., et al.,*
Civil Action No. 05-11084-PBS

) **Hon. Patti B. Saris**
)
) **Magistrate Judge**
) **Marianne B. Bowler**
)
)

**DEY DEFENDANTS' OPPOSITION TO THE UNITED STATES' MOTION
TO STRIKE DEY DEFENDANTS' EXHIBIT AND WITNESS LISTS**

Defendants Dey, Inc., Dey Pharma, L.P. (formerly known as Dey, L.P.) and Dey L.P., Inc. (collectively, "Dey") submit this brief in opposition to the United States' Motion to Strike the Dey Defendants' Exhibit and Witness Lists for Failure to Comply with Rule 26(a)(3)(A). The motion should be denied as moot.

During the March 26, 2010 conference, at the request of the United States, the Court vacated the April 26, 2010 trial setting and all the pretrial deadlines keyed to it. *See* Transcript of March 26, 2010 Status Conference (Docket No. 7035) ("Transcript") at 9:24-10:4, 12:19-24. The Court also directed both parties to submit revised exhibit and witness lists, including one version that contemplates a Dey-only Medicare trial and one that contemplates a Dey-only Medicare/Medicaid trial. *Id.* at 12:19-25; 15:15-21. Per the Court's instructions, Dey is preparing separate witness lists, exhibit lists, and deposition designations that would reflect a Medicare-only trial and a combined Medicare/Medicaid trial. These revised lists – which will be submitted on April 26, 2010 – will supersede the lists that are the subject of this motion. It is a

waste of this Court's limited time and resources to rule on this motion when the Court's directives have already rendered inoperative the lists the United States seeks to strike.

Accordingly, the United States' motion should be denied as moot.

Prior to the submission of this opposition, Dey attempted to resolve this motion with counsel for the United States by proposing to postpone further briefing until the parties were closer to submitting the revised lists the Court instructed them to submit. Counsel for the United States rejected this proposal and insisted that briefing on the motion proceed. Accordingly, Dey submits this response and requests the motion be denied.

Dated: April 14, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on April 14, 2010, a copy to LexisNexis File and Serve for posting and notification to all parties.

By: /s/ Martin F. Murphy
Martin F. Murphy